

Amendments to Senate Bill No. 396
1st Reading Copy

Requested by Senator Bob Story

For the Senate Natural Resources Committee

Prepared by Sonja Nowakowski
February 17, 2009 (1:21pm)

1. Page 1, line 10 through line 22.

Strike: subsection (1) in its entirety

Insert: "(1) An appropriator may change the point of diversion or combine points of diversion of surface water appropriation rights without the prior approval of the department for the purpose of replacing a point of diversion if:

(a) there are no other changes to the water right;

(b) the amount of water diverted is not increased;

(c) there are not points of diversion or intervening water rights between the old point of diversion and the new point of diversion or the appropriator obtains written waivers from all intervening water right holders;

(d) the new point of diversion is on the same source and within the same reach of stream owned by or under the control of the appropriator; and

(e) the appropriator can show that the existing point of diversion has been used in the 10 years prior to the notice for the change in point of diversion."

2. Page 1, line 23.

Following: "if"

Insert: "the department determines that"

3. Page 1, line 24.

Following: "met"

Strike: ". "

Insert: "and the appropriator has submitted a notice in accordance with 85-2-402(18). The department may inspect the diversion to confirm the criteria under subsection (1) of this section."

4. Page 1, line 25 through line 26.

Strike: subsection (3) in its entirety

Insert: "(3) (a) An appropriator may file a complaint with the department alleging that the change in point of diversion will adversely affect the use of the existing water rights of other persons or other perfected or planned uses or developments for which a permit or certificate has been issued or for which a state water reservation has been issued under Title 85, chapter 2, part 3.

(b) If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the change or make the change subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(c) The burden of proof at the hearing is on the appropriator changing the point of diversion."

5. Page 8.

Following: line 4

Insert: "(18) (a) For a change in a point of diversion in accordance with [section 1], after the change in the point of diversion for an appropriation right is made, the appropriator shall file a change of appropriation right notice on a form provided by the department.

(b) The department shall review the notice to determine if the notice is correct and complete.

(c) The department may not issue an authorization of a change in appropriation right for the point of diversion until a correct and complete notice has been filed with the department and the department determines that the criteria under [section 1] are met.

(d) The department shall return a defective notice to the appropriator, along with a description of defects in the notice. The appropriator shall refile a corrected and complete notice within 30 days of notification of defects or within a further timeframe determined by the department, not to exceed 6 months."

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